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No. 447

Supreme Court of the United States

(OCTOBER TERM, 1943)

WALTER B. JOHNSON, T. R. HUSTED, B. A. WEST ET AL.,
Petitioners,

VERSUS

YELLOW CAB TRANSIT COMPANY,
Respondent.

BRIEF OF RESPONDENT

JOHN B. DUDLEY,
DUKE DUVALL,
Apco Tower,
Attorneys for Respondent.

DUDLEY, DUVALL & DUDLEY,
Of Counsel.

January, 1944.

UTTERBACK TYPESETTING CO., OKLAHOMA CITY, OKLA.

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Respondent.

BRIEF OF RESPONDENT

OPINIONS BELOW

One opinion was delivered by the District Court, written by Honorable Edgar S. Vaught, District Judge, filed December 24, 1942 (R. 18), and reported in Fed. Supp. 594.

The opinion of the Tenth Circuit Court of Appeals was written by Senior Circuit Judge Phillips, dated July 26, 1943 (R. 40), and reported in 137 Fed. (2d) 274.

STATEMENT[1]

The ultimate question here involved is whether a shipment of liquor from outside a state for delivery within a United States Military Reservation or other Federal enclave within such state's geographical boundaries constitutes an importation "into" that state, subjecting it to the state's liquor regulatory laws, or is a shipment "through" the state and not subject to such laws.

Ancillary questions are: (a) whether the so-called Assimilative Crimes Act[2] makes state liquor or other regulatory and licensing statutes effective in Federal enclaves as Federal statutes by adoption, all such statutes providing a penalty for their violation; (b) if so, whether there has been a violation of such statutory measures; (c) and, constituting an inchoate Federal offense, whether the unlawful acts of the petitioners, state enforcement officers, would be immune from injunctive relief.

The facts are not in dispute, being embodied in the admissions in the pleadings (R. 3, 10), in a stipulation (R. 11), and a supplemental stipulation (R. 17). Respondent, a

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1. In making this brief, independent statement, we are not unmindful of Paragraph 4, Rule 27 of this Court but do so of necessity, as petitioners have not yet served their brief and are out of time.

2. Act of June 6, 1940, c. 241, 54 Stat. 234:
"Whoever, within the territorial limits of any State, organized Territory, or district, but within or upon any of the places now existing, or hereafter reserved or acquired, described in section 451 of this title, shall do or omit the doing of any act or thing which is not made penal by any laws of Congress, but which if committed or omitted within the jurisdiction of the State, Territory, or district in which such place is situated, by the laws thereof in force on February 1, 1940, and remaining in force at the time of the doing or omitting of doing of such act or thing, would be penal, shall be deemed guilty of a like offense and be subject to a like punishment".

common carrier for hire by motor vehicle of general commodities, operating under authority of the Interstate Commerce Commission, accepted at East St. Louis, Illinois, a shipment of 225 cases of liquor, consigned to the F. A. S. Officers Club Mess, Fort Sill Military Reservation[3], which lies within the boundaries of the state of Oklahoma. While this shipment was in transit, it was seized by petitioners for the purpose of confiscation and destruction[4].

This suit was instituted, seeking a mandatory injunc- against petitioners, requiring them to hold the shipment in *status quo* pending a determination of the action, requiring them to return the shipment to respondent and refrain from interfering with the movement of such shipment in interstate commerce to its destination.

The F. A. S. Officers Club comprises a membership of several thousand Army Officers on active duty at the Reservation, and provides an officers mess as well as living quarters for a number of officers and furnishes various club recreation facilities such as lounges, reading rooms and the like, and renders various club services.

Prior to the date of the shipment, several hundred members of the club gave to the club secretary their individual written orders for varying quantities of intoxicating liquor, which orders were totaled and telephoned in to the shipper liquor company at East St. Louis, Illinois, which accepted the order and in fulfillment delivered the instant

3. Referred to herein as Reservation.

4. Destruction of confiscated liquor is mandatory under the state law, and no other disposition can be made of it. Laws 1913, Chapter 26, Page 45, Section 1; 37 O. S. A. 90.

shipment to respondent for delivery at the club within the Reservation. Had the shipment been so delivered, it would have been received by the secretary of the club for the various officers, and distributed to them.

In granting the relief prayed for, the trial court held that the Reservation is under the exclusive jurisdiction of the Federal Government, and the State has no power to legislate over it except in certain limited respects not material in this case[5]; that the shipment was moving in interstate commerce *through* the State of Oklahoma and was not an importation into the State; and such shipment was not in violation of any Federal or State laws, and the seizure being unlawful, the liquor should be returned to respondent for delivery free from interference. The Circuit Court affirmed.

ARGUMENT

Not having the benefit of petitioners' brief, we shall pattern the points of our argument after the "questions presented" set forth in the petition for *certiorari* (Page 8), assuming that all of such questions will be argued but no others.

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5. e.g. Act. of June 25, 1936, 49 Stats. 1938, 40 USCA 290, making State Workmen's Compensation Laws applicable in Federal enclaves; the Buck Act, October 9, 1940, 54 Stats. 1059, 4 USCA 14-18, extending state income, sales and use tax acts to Federal areas.

Point I.

Fort Sill Military Reservation is under the exclusive dominion of the United States, and the State of Oklahoma has no legislative jurisdiction over it except in limited respects immaterial to the questions here involved. The Twenty-first Amendment to the United States Constitution does not affect such jurisdiction.

It was stipulated that the Reservation was acquired by the United States from France long before Oklahoma became a state, and is now and always has been used since prior to statehood, exclusively for military purposes and for the performance of the functions of the War Department (R. 13). In 1913, the Oklahoma Legislature enacted a statute ceding exclusive jurisdiction over the Reservation to the United States, undertaking to reserve only the right to serve its civil and criminal processes therein and the right to tax railroad and other corporations on their franchises and property in the Reservation[6].

The Supreme Court of Oklahoma has construed this statute in harmony with our position—disclaiming state

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6. Laws 1913, Chapter 52, Page 90; 80 O. S. A. 4, which reads: "Exclusive jurisdiction be, and the same is hereby ceded to the United States over all the territory now owned by the United States and comprised within the limits of the Military Reservation of Fort Sill, in Comanche County, and Fort Reno, in Canadian County, as declared from time to time by the President of the United States, and over such lands as may hereafter be acquired for the enlargement of said reservations; [illegible]ided, however, that the State of Oklahoma reserves the righ[illegible]ve civil or criminal process within said reservations in suits or p[illegible]ecutions for or on account of rights acquired, obligations incurred, or crimes committed in said state but outside of such cessions and reservations; provided, further, that the State of Oklahoma reserves the right to tax railroad companies and other corporations and their franchises and property on said reservations; and provided, further, that the jurisdiction herein ceded shall continue no longer than the United States shall own and hold said reservations for military purposes".

jurisdiction over the Reservation. *Utley* v. *State Industrial Commission*, 176 Okla. 255, 55 Pac. (2d) 762; *In re Annexation of Reno Quartermaster Depot Military Reservation to Independent School District No. 34, Canadian County*, 180 Okla. 274, 69 Pac. (2d) 659.

Under the holdings of this Court, there can likewise be no question about the correctness of the above stated proposition that Federal jurisdiction is exclusive.

—*Louisville & Nashville Railroad Co.* v. *Cook Brewing Company*, 223 U. S. 70, 56 L. Ed. 355;

Clairmont v. *United States*, 225 U. S. 551, 56 L. Ed. 1201;

Arlington Hotel Company v. *Fant*, 278 U. S. 439, 73 L. Ed. 441;

United States v. *Unzeuta*, 281 U. S. 138, 74 L. Ed. 761;

Surplus Trading Company v. *Cook*, 281 U. S. 647, 74 L. Ed. 1091;

Standard Oil Company of California v. *California*, 291 U. S. 242, 78 L. Ed. 775;

Murray v. *Gerrick & Company*, 291 U. S. 315, 78 L. Ed. 821;

Collins v. *Yosemite Park Company*, 304 U. S. 518, 82 L. Ed. 1502;

St. Louis-San Francisco Railway Company v. *Satterfield* (CCA Oklahoma) 27 Fed. (2d) 586.

In the Yosemite Park Company case the Federal area bore practically the same relation, from a jurisdictional standpoint, to the state of California as the Reservation bears to the state of Oklahoma here, under a statute closely similar to the Oklahoma statute ceding jurisdiction to the United States.

This Court, after noticing the California statute of cession, held with particular reference to the power of the state to control, regulate or legislate over liquor traffic and use within Federal areas, as follows:

> "The jurisdiction over the Yosemite National Park is exclusively in the United States except as reserved to California, e. g., right to tax, by the Act of April 15, 1919. *As there is no reservation of the right to control the sale or use of alcoholic beverages, such regulatory provisions as are found in the Act under consideration are unenforceable in the Park.*
>
> "* * * The State of California has in the area of the Yosemite National Park only the jurisdiction saved under the cession and acceptance acts of 1919 and 1920, it does not have power to regulate the liquor traffic in the Park. *Except as to this reserved jurisdiction, California 'put that area beyond the field of operation of her laws'* " (Italics ours).

Point II.

The shipment, originating in Illinois, consigned for delivery by common carrier into Fort Sill Military Reservation, was a movement "through" the State of Oklahoma in Interstate Commerce, and not an importation "into" the state so as to be subject to the state's liquor laws, notwithstanding the Twenty-first Amendment to the United States Constitution.

While it is true that the Twenty-first Amendment to the United States Constitution increased the power of the state with respect to the importation of intoxicating liquor to the extent that it may entirely prohibit importations into the state or adopt any lesser degree of regulation[7], may even make reasonable requirements for a permit for the transportation of intoxicating liquor in interstate commerce through the state to prevent diversion into illegal channels in the state[8]; the territorial powers and jurisdiction of the state were not increased by the Amendment; and, exclusive territorial jurisdiction over the Reservation being in the United States, no power was given to the state by the Twenty-first Amendment to prohibit or regulate the importation and use of intoxicating liquor in the Reservation. *Collins* v. *Yosemite Park Company*, 304 U. S. 518, 58 S. Ct. 1009, 82 L. Ed. 1502.

Petitioners urge that the shipment in controversy was not a movement in interstate commerce "through" the state of Oklahoma, so as to be invulnerable to the state's liquor

7. Mahoney v. Joseph Triner Corporation, 304 U. S. 401, 58 S. Ct. 952, 82 L. Ed. 1424; State Board of Equalization v. Young's Market Company, 299 U. S. 59, 57 S. Ct. 77, 81 L. Ed. 38.

8. Duckworth v. State of Arkansas, 314 U. S. 390, 62 S. Ct. 311, 86 L. Ed. 294, 138 A. L. R. 1144.

laws, upon the theory that although the point of origin, Illinois, is a state, the destination, Fort Sill Military Reservation, is not one. In other words, that in order for a shipment to be "inter-state" to come within the protection of the Commerce Clause of the Constitution and the exclusive and plenary power of Congress over it, both the origin and destination of the shipment must fall within a strict and literal definition of the word. To state the contention reveals its vice.

Shipment Was Moving In Interstate Commerce.

In the first place, a cardinal principle in applying the Commerce Clause of the United States Constitution is that the phrase "interstate commerce" is to be construed as "not a technical legal conception but a practical one drawn from the course of business." *Minnesota* v. *Blasuis*, 290 U. S. 1, 78 L. Ed. 131, 134; 11 American Jurisprudence, Section 4, Page 8, Note 9, citing many decisions of this Court.

In moving from the point of origin to destination, it was necessary that the shipment cross several state lines. This was sufficient to make the movement one in interstate commerce within the purview of the Commerce Clause[9], and, indeed, if both origin and destination lie wholly within the boundaries of a single state, but the movement necessitates crossing a state line, it is a movement in interstate commerce[10]. Then, too, the instant shipment was being

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9. National Labor Relations Board v. Fainblatt, 306 U. S. 601, 83 L. Ed. 1014.

10. Missouri, Pacific Railroad Company vs. Stroud, 267 U. S. 404, 69 L. Ed. 683.

transported by respondent under its authority from the Interstate Commerce Commission, pursuant to Part II of the Interstate Commerce Act, 49 USCA, Chapter 8, Section 301, *et seq.*, which includes the present shipment within its definition of interstate commerce.

It has been held that commerce between states and territories is interstate commerce[11], as commerce between states and the District of Columbia[12].

However, the exclusive jurisdiction of the United States over the instant shipment and the lack of it in the state is not dependent upon the Commerce Clause of the United States Constitution. The provision of Article IV, Section 3, Clause 2 of the Constitution, that "The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States", is amply sufficient to foreclose any jurisdiction in the state[13].

So, the same result is reached whether the Commerce Clause of the Constitution is applied or Article IV, Section 3, giving Congress plenary power over its possessions. In either event, commerce with territories and possessions of the United States, on the one hand, and state or foreign na-

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11. Hanley v. Kansas City Southern Railway Company, 187 U. S. 617, 47 L. Ed. 333; Inter-Island Steam Navigation Company v. Territory of Hawaii 96 Fed. (2d) 412, affirmed 305, U. S. 306, 83 L. Ed. 189.

12. Stoutenburgh v. Hennick, 129 U. S. 141, 32 L. Ed. 637; Galloway v. Bell, 11 Fed. (2d) 558.

13. Sancho v. Barcardi Corporation (9th Cir.) 109 Fed. (2d) 57, wherein it is said:
"The right of Congress to regulate the commerce of Puerto Rico is founded on the constitutional power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States, and the power is in no direct sense dependent upon the commerce clause".

tions, on the other, is intercourse exclusively within the control of Congress.

This Court in the case of *Collins* v. *Yosemite Park Company, supra,* if not directly, certainly by implication upheld the exclusive power of Congress over commerce with a National Park, in holding that the California Liquor Control Act could not affect such commerce and in enjoining interference by state officials with the transportation of liquor through California into the Park.

There is no real difference, so far as the power of the state of Oklahoma is concerned over this shipment at the time of the seizure, than if it had been destined for delivery in Fort Sam Houston in the State of Texas.

This, Being An Interstate Shipment Moving "Through" and Not "Into" Oklahoma, Was Not Subject to Seizure Under State Law.

It is a legal commonplace that a state cannot control or interfere with liquor shipments moving in interstate commerce through the state, by virtue of the exclusive control of Congress over interstate movements under the Commerce Clause of the United States Constitution. The Twenty-first Amendment to the United States Constitution made no change in this respect, nor did the Webb-Kenyon Act, 27 USCA, Chapter 6, Section 122 (re-enacted after the adoption of said Amendment), nor the Legislation Enforcement Act of 1936, 27 USCA, Chapter 9, Section 221, *et seq.*

The Twenty-first Amendment and implementing legislation by Congress merely operated to free liquor im-

portations into a state from the protection and limitations of the Commerce Clause against legislation by the state[14].

This Shipment Did Not Constitute An Importation "Into" Oklahoma.

The very issue involved here, that a shipment of liquor moving into a Federal Reservation lying within the confines of a state was a shipment "through" the state in interstate commerce and was one over which the state had no control, was squarely presented in the recent case of *Collins* v. *Yosemite Park Company*, 304 U. S. 518, 82 L. Ed. 1502, referred to under our first proposition in support of the lack of a state's jurisdiction over a Military Reservation. The Court on the question now under consideration, held in unmistakable language in favor of the appellee's position.

The facts in this case were that the United States owned lands comprising the Yosemite National Park. Part of the land had been acquired by cession from Mexico under the Treaty of Guadalupe Hidalgo in 1848, and part acquired by cession from the state of California. In the National Park there was a concession granted to the appellee by the Federal Government for the operation of hotels, camps and stores under a contract with the Secretary of the Interior.

14. United States v. Gudger 249 U. S. 373, 63 L. Ed. 653; United States v. Hill, 248 U. S. 420, 63 L. Ed. 337; Louisville & Nashville R. Co. v. F. W. Cook Brewing Co., 233 U. S. 70, 56 L. Ed. 355; Hayes v. United States (10th Cir.) 112 Fed. (2d) 417; Premier-Pabst Sales Company v. State Board of Equalization (3-Judge Court, D. C., Cal.), 13 F. S. 90; Williams v. Commonwealth (Va.), 192 S. E. 795; Barnett v. State (Ala., 1942), 9 So. (2d) 267; McCanless v. Graham (Tenn.), 146 S. W. (2d) 137; 30 American Jurisprudence "Intoxicating Liquors", Sections 232, 239, et seq.; 15 C. J. S. "Commerce", Section 99, Page 452, Note 27.

The state authorities asserted that the California Alcoholic Beverage Control Act applied to the appellee concessionaire, and had threatened to seize alcoholic "beverages on or being transported to appellee's premises", and threatened to "institute civil and criminal proceedings against appellee for violation of the Act * * *". Appellee brought this suit to restrain enforcement of the Alcoholic Beverage Control Act within Yosemite Park, on the theory that the park is within the exclusive jurisdiction of the United States.

The state laws did not apply to shipments of liquor moving into the Reservation, and this notwithstanding the Twenty-first Amendment to the United States Constitution. In the twelfth paragraph of the syllabus, the Court said:

> "The provision of the Twenty-first Amendment of the Federal Constitution prohibiting the importation of intoxicating liquors into a state for delivery or use therein is inapplicable to the importation of liquor into a national park, exclusive jurisdiction over which, at least so far as regulatory measures are concerned, has been ceded by the state to the United States".

In elaboration upon this statement, the Court said in the body of the opinion:

> "The state makes the point that Section 2 of the Twenty-first Amendment gives it the right to regulate the importation of intoxicating liquors. Reliance for enforcement is placed upon Sections 49 and 49.2 of the Alcoholic Beverage Control Act. The argument of this claim is bottomed upon our decision in *State Board of Equalization* v. *Young's Market Co.*, 229 U. S. 59, 81 L. Ed. 38, 57 S. Ct. 77, where we held that a statute im-

posing a $500 license fee for importing and a $750 license fee for brewing beer did not violate the commerce clause or the equal protection clause, because the words of the Twenty-first Amendment, 'are apt to confer upon the state the power to forbid all importations' and 'the state may adopt a lesser degree of regulation than total prohibition' (pp. 62, 63)".

The Court, in meeting and rejecting this theory, used this clear and forceful language which is conclusive upon the issue in the case at bar:

> "The lower court was of the opinion that though the Amendment may have increased 'the state's power to deal with the problem * * *, it did not increase its jurisdiction'. With this conclusion, we agree. *As territorial jurisdiction over the Park was in the United States, the state could not legislate for the area merely on account of the Twenty-first Amendment.* There was no transportation *into* California 'for delivery or use therein'. *The delivery and use is in the Park, and under a distinct sovereignty.* Where exclusive jurisdiction is in the United States, without power in the state to regulate alcoholic beverages, the Twenty-first Amendment is not applicable" (Italics ours).

The Court upheld the right of California to tax the liquor, but not to regulate the shipments of the same, and approved a decree of mandatory injunction by the lower court prohibiting interference with shipments of liquor moving into the Reservation. The substance of the final decree in this regard is stated by the Court:

> "The final decree forbids entering upon the premises of complainant; seizing, impeding or interferring with

any shipments to complainant in Yosemite National Park; from instituting any actions or proceedings in any court of law or equity for violations or alleged violations of said Alcoholic Beverage Control Act in respect of the importation, possession or sale in the Park. * * *."

Also, the California Act involved here (quoting in the footnote of the decision, 82 L. Ed., at 1514) made it a crime to bring liquor into the state in violation of the state liquor laws, just as the Oklahoma law provides. *Dunn* v. *United States* (10th Cir.) 98 Fed. (2d) 119; *Hayes* v. *United States* (10th Cir.) 112 Fed. (2d) 417.

The text of 30 American Jurisprudence 383, Section 240 "Intoxicating Liquors", reads:

> "The provision of the Twenty-first Amendment to the Federal Constitution prohibiting the importation of intoxicating liquors into a state for delivery or use therein is inapplicable to the importation of liquor into a national park, exclusive jurisdiction over which, at least so far as regulatory measures are concerned, has been ceded by the state to the United States * * *."

In *Clairmont* v. *United States*, 225 U. S. 551, 56 L. Ed. 1201, there was before the Court the question of whether or not a person having whiskey in his possession as he rode on a train on the railroad right-of-way through the Indian Reservation was guilty of "introducing liquor into the Reservation". The defendant had bought the liquor before getting on the train, and was arrested with the whiskey in his possession while he was on the railroad right-of-way

within the territorial limits of the Indian Reservation. The Court held that this did not amount to bringing liquor *into* the Reservation, saying:

> "The question, then, is whether a person having intoxicating liquor in his possession on a railroad train running on this strip can be deemed to have introduced the liquor 'into the Indian country' within the meaning of the act of 1897. Was the strip 'Indian country', so that the District Court of the United States can be said to have had jurisdiction of the alleged offense?
>
> "In the present case there was no provision, either in the treaty with the Indians, or by act of Congress, which limited the effect of the surrender of the Indian title.
>
> "To repeat, the plaintiff in error was not charged with 'attempting to introduce' the liquor into Indian country, but with the actual introduction. If having the liquor in his possession on the train on this right of way did not constitute such introduction, it is immaterial, so far as the charge is concerned, whether or not he intended to take it elsewhere. Nor is it important that the plaintiff in error was an Indian. The statute makes it an offense for 'any person' to introduce liquor into Indian country.
>
> "Our conclusion must be that the right of way had been completely withdrawn from the reservation by the surrender of the Indian title, and that in accordance with the repeated rulings of this court, it was not Indian country".

In *Fort Leavenworth Railroad Company* v. *Lowe*, *supra*, cited by the Supreme Court of Oklahoma with approval in the above decision of *Utley* v. *State Industrial*

Commission, the United States Supreme Court quoted from a Massachusetts decision, *Mitchell* v. *Tibbets*, 17 Pick. 298, wherein the Court held that the transporting of stone into a United States Navy Yard within the territorial limits of the State of Massachusetts did not amount to the importation of stone into the state. The quoted language is:

> "In *Mitchell* v. *Tibbets*, before the same court, years afterwards, 17 Pick. 298, it was held that a vessel employed in transporting stone from Maine to the navy yards at Charlestown, Mass., a place purchased by the United States with the consent of the State, was not employed in transporting stone within the Commonwealth, and therefore committed no offense in disregarding a statute making certain requirements of vessels thus employed. *The court said that to bring a vessel within the description of the statute, she must be employed in landing stone at, or taking stone from, some place in the Commonwealth*, and that the law of Massachusetts did not extend to and operate within the decision in 8 Massachusetts" (Italics ours).

It must be true that if a state has no right to control the activities of the personnel of a Military Reservation or other matters therein, then it certainly cannot do indirectly what it cannot do directly, and it cannot, by an embargo, prohibit the transportation of liquor, cigarettes or other things into a Military Reservation, when it has no right to regulate the use thereof within the confines of such Government property.

In a very recent case decided March 1, 1943, this Court, in *Pacific Coast Dairy, Inc.*, v. *Department of Agriculture of California*, 87 L. Ed. (Adv. Ops. No. 10) 560, expressly

condemned any effort upon the part of a state to indirectly control activities within a Federal enclave (there the Military Reservation of Moffett Field) by adopting legislation affecting persons within a state doing acts preparatory to performing some service or making some sale within the enclave. In that case, California passed an amendatory statute to the California Milk Control Act for the express purpose of controlling and regulating the supplying and furnishing of milk within Federal enclaves which the original Act was held not to cover[15].

This Court, however, struck this amendment down because of the complete lack of power to regulate or control or legislate for activities, transactions and commerce of a Federal possession, using this language:

> "To hold otherwise would be to affirm that California may ignore the Constitutional provision that 'This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; * * * shall be the Supreme Law of the land'; (Article 6, Clause 2) * * * It would be denial of the federal power 'to exercise exclusive Legislation (citing *James* v. *Dravo Contracting Co.*, 302 U. S. 134, 141, 82 L. Ed. 155, 162, 114 A. L. R., 218)'. As respects such federal territory Congress has the combined powers of a general and a state government (citing *Stoutenburgh* v. *Hennick*, 129 U. S. 141, 147, 32 L. Ed. 637, 638, 9 S. Ct. 256)".

In elaborating upon this holding and commenting upon the State's "assertion that the law in essence is the regulation of conduct wholly within the State's jurisdic-

15. Consolidated Milk Producers v. Parker (Cal.) 123 Pac. (2d) 449.

tion", the Court used this language in the fourth paragraph of the syllabus:

> "The doctrine that a state is not disenabled from policing its own concerns by the mere fact that its regulations may beget effects on those living beyond its borders, does not apply to transactions in territory within the state over which the Federal Government has acquired exclusive jurisdiction".

Another reason the Oklahoma statutes could not operate upon this interstate shipment is that Congress has occupied the field, and it is not necessary that Congress enact specific inhibitive legislation prohibiting the state from acting where it has undertaken to enter the field. *Southern Railway Company* v. *Reed*, 222 U. S. 424, 56 L. Ed. 257.

Point III.

This shipment violates no Federal law either under the Assimilative Crimes Act or otherwise; and in any event, since it was not subject to state law, it's wrongful seizure by petitioners was properly vindicated by injunction.

The Assimilative Crimes Act[16], like any other statute, must have a reasonable construction, and its interpretation should be governed by the intent of Congress as nearly as may be ascertained. It is our position that this Act does not include within its reach the adoption as Federal laws of every regulatory, licensing and other state measure which provides for some sort of punishment for its viola-

16. Quoted ante Page 2, Footnote 2.

tion. It is unthinkable that Congress should so intend, because this would give over the government of Federal enclaves to a great degree into the hands of the individual states. And, though this Act was not expressly mentioned, this Court, this year emphatically condemned such a condition by any means. *Pacific Coast Dairy, Inc.*, v. *Department of Agriculture of California, supra.*

Looking to the history of this Act, which has been in effect for more than a century, it will be seen that its purpose was merely to satisfy a lack of a comprehensive Federal criminal code. There are no common law offenses against the United States[17], and the criminal jurisdiction of the United States is derived exclusively from specific statutes. The Federal criminal code is rather meager, comparatively[18].

It seems clear that this act should operate to adopt as Federal laws for Federal areas only criminal statutes in the popular sense of the word. Statutes prohibiting offenses in-

17. Jerome v. United States, 318 U. S. 101, 87 L. Ed. (Adv. Ops.) 433, 436; Hudspeth v. Melville, 127 Fed. (2d) 373.

18. The forerunner of the instant statute was the Act of March 3, 1825 (Chapter 65, 4 Stats at Large 115) whose author was Mr. Justice Story. He said in regard to this section:

"'The Criminal Code of the United States is singularly defective and inefficient * * * Few, very few, of the practical crimes (if I may so say) are now punishable by statutes, and if the courts have no general common-law jurisdiction (which is a vexed question), they are wholly dispunishable. The state courts have no jurisdiction of crimes committed on the high seas, or in places ceded to the United States. Rapes, arsons, batteries, and a host of other crimes may in these places be now committed with impunity. Suppose a conspiracy to commit treason in any of these places, by civil persons, how can the crime be punished? These are cases where the United States have an exclusive local jurisdiction. And can it be less fit that the Government should have power to protect itself in all other places where it exercises a legitimate authority? That Congress has power to provide for all crimes against the United States is incontestable.'" (Life of Justice Story, Boston, 1851, Vol. 1, p. 293) United States v. Press Publishing Company, 219 U. S. 1, 55 L. ed. 65.

volving moral turpitude, and from the standpoint of the National Government, the laws governing the sale, transportation and use of intoxicating liquors do not fall within that category, but come rather within the field of mere regulatory and licensing measures.

Though there is a dearth of authority upon the scope of the Assimilative Crimes Act, in our opinion this Court in *Collins* v. *Yosemite Park Company, supra*, held, at least by implication, that the Assimilative Crimes Act did not put into operation in Federal enclaves state liquor laws, even though they provided a penalty for their violation[19]. Although the California license or permit law is more liberal than that of Oklahoma, that is a matter of degree. In neither state are alcoholic liquors absolutely prohibited, and in both states violations of the liquor laws are made penal offenses.

Furthermore, it would seem to be an irresistible conclusion that only such state statutes as are harmonious with Federal policy are adopted as Federal laws in United States enclaves. Where the United States acquires a tract of land from another sovereign, only such "local law *not inconsistent with Federal policy* remains in force, until altered by National legislation." *James Stewart & Co., Inc.* v. *Sadrakula*, 309 U. S. 94, 84 L. Ed. 596; *Pacific Coast Dairy, Inc.* v. *Department of Agriculture*, 318 U. S. 285, 87 L. Ed.

19. We are supported in this view by the Three-Judge Oregon Court in Crater Lake National Park Company v. Oregon Liquor Control Commission, 26 F. S. 363, wherein it was held on the authority of the Yosemite Park Company case, in the first syllabus:
"Oregon Liquor Control Act is inapplicable to Crater Lake area, which was ceded by state to and accepted by Federal Government, notwithstanding Federal Assimilative Crimes Act."

560. And under the Full Faith and Credit Clause of the Constitution, a state is not required to give effect to the statutes and laws of other states contrary to its own policy. *Bradford Electric Light Company* v. *Clapper*, 286 U. S. 145, 76 L. Ed. 1027; *Pink* v. *A. A. A. Railway Express, Inc.*, 314 U. S. 201, 86 L. Ed. 152.

This Court had held that statutes will be construed to arrive at a reasonable result and will even disregard the literal phraseology to reach what is apparently the true intention of Congress and a common sense construction. *United States* v. *American Trucking Association*, 310 U. S. 534, 84 L. Ed. 1345.

If the statutes of the state as to intoxicating liquors are made Federal laws by the Assimilative Crimes Act, then there is no reason why the state statutes as to beer and non-intoxicating beverages (37 O. S. A., Chapter 2, Section 151 to 197) which likewise provide a penalty for their violation, would not likewise be operative and govern activities of the personnel on the Reservation.

In truth, if the contentions of the petitioners are sustained, it will mean that all Federal enclaves will be just as effectively under the legislative dominion of the state as if it had complete jurisdiction. This is not the law as indicated by the position taken in *Pacific Coast Dairy, Inc.*, v. *Department of Agriculture*, *supra*.

Oklahoma Liquor Laws

It is our contention that there has been no violation of the liquor laws of Oklahoma by this shipment.

The intoxicating liquor statutes of Oklahoma prohibit the sale of liquor therein, but do not prohibit its purchase[20]. Nor do such laws prohibit the personal use of liquor nor possession thereof for personal use.

There is no statute in Oklahoma making mere possession of intoxicating liquor a criminal offense. 37 O. S. A. 82, Laws 1913, Chapter 26, Section 6, as amended by Laws 1933, Chapter 153, Section 3, only makes possession of liquor in excess "of one quart * * * *prima facie* evidence of an intention to convey, sell or otherwise dispose of such liquor[21]".

The transportation of intoxicating liquor is prohibited only (1) from a point within the state to another point within the state; in other words, a purely intrastate shipment. 37 O. S. A. 1:

> "It shall be unlawful for any person, individual or corporation * * * to ship, or in any way convey, such liquor from one place within this state to another place therein except the conveyance of a lawful purchase as herein authorized * * * *";

20. 37 O. S. A., Section 1, Laws 1933, Chapter 153, Page 338, Section 2 (quoted in full in petitioners' brief) provides in part that it shall be unlawful for any person, individual or corporation "* * * to manufacture, sell, barter, give away, or otherwise furnish any liquors * * *."

21. Whitwell v. State, 72 Okla. Cr. 192, 114 Pac. (2d) 489, 490; Haltom v. State, 58 Okla. Cr. 117, 50 Pac. (2d) 744, 746; Hull v. State, 61 Okla. Cr. 12, 65 Pac. (2d) 423, 425; Stump v. State, 66 Okla. Cr. 391, 92 Pac. (2d) 616, 619; Knighton v. State, 64 Okla. Cr. 322, 79 Pac. (2d) 1030, 1032; Robinson v. State, 71 Okla. Cr. 75, 108 Pac. (2d) 196, 198.

(2) the transportation of intoxicating liquor into the state from another state where it is destined for delivery to a point within the state. In other words, transportation for importation into Oklahoma. 37 O. S. A. 41, S. L. 1939, Page 16, Section 1, *et seq.*

The title of this Act reads:

> "AN ACT creating and providing for a permit system for the importation and transportation of intoxicating liquor, containing more than four per cent of alcohol by volume, into the State of Oklahoma for scientific, scaramental, medicinal, or mechanical purposes; forbidding importation of such liquor without permit; fixing fees; providing penalties; repealing Sections 2597 and 2598, Oklahoma Statutes, 1931; and declaring an emergency".

Indeed, it is fundamental that any effort on the part of the state to prohibit any transportation of liquor except intrastate transportation or importation into the state would be invalid as impinging upon the Commerce Clause of the United States Constitution.

Petitioners contend that the Oklahoma Criminal Court of Appeals has held otherwise, citing as an example the early case of *Huff* v. *State*, 9 Okla. Cr. 675, 133 Pac. 265. In that case the question of interstate commerce was not involved or discussed, the only question being as to whether one point on the highway to another point thereon was within the purview of the statutory language of "from one place within this state to another place therein", as the Court had held in an earlier case that transportation from

one place in a building to another place in the same structure did not satisfy this language of the statute. Nor has search revealed any case holding that the Oklahoma statutes cover transportation except intrastate or importations.

As a matter of fact, our Supreme Court has squarely held in *Brandon* v. *State*, 66 Okla. 69, 167 Pac. 212, that an interstate shipment is not subject to seizure while it is in the hands of the carrier:

> " 'In order to have the state laws attach to an interstate shipment of liquor, it must affirmatively appear from the evidence that such shipment, or such part thereof as is sought to be confiscated, has been delivered by the carrier or its agent to the consignee or his agent. Where it is admitted by the state, shown by the uncontradicted evidence, or found by the court from evidence reasonably tending to support such finding, that intoxicating liquors seized were at the time of the seizure in the possession of an interstate carrier, such liquors cannot legally be seized or confiscated, so long as such shipment retains its interstate character'. *Robertson* v. *State*, 46 Okla. 691, 149 Pac. 194, and the authorities there cited".

In Section 1, Chapter 186, Laws 1917, 37 O. S. A. 38, it is provided that it shall be unlawful for any person to receive within the state of Oklahoma from a common or other carried any shipment of intoxicating liquors or possess any such liquors received from a common carrier, even though such receipt or possession might be for personal use. The Circuit Court of Appeals justifiably held that it would seem that this statutory provision was unconstitutional in view of several state decisions declaring invalid two separate

sections that undertook to restrict possession for personal use. This particular section has not been so declared because the question has never been raised.

In the case of *Ex parte Wilson*, 6 Okla. Cr. 451, 119 Pac. 596, the Court in an exhaustive opinion held that:

> "Section 4, c. 70, Session Laws, 1911, which provides that it shall be unlawful for any person to have or keep in excess of one quart of spirituous, vinous, fermented or malt liquors, or any imitation thereof, or substitute therefor, or in any manner permit any other person to have or keep any such liquors, etc., was not enacted within the reasonable exercise of the police power and is therefore unconstitutional and void".

The section there involved was also enacted as Section 4, Chapter 153, O. S. L. 1933, 37 O. S. A. 31, practically without change.

The companion section to this one is Section 5, Chapter 70, O. S. L. 1910-11, 37 O. S. A. 32, and was likewise held unconstitutional for the same reason in *Morse* v. *State*, 63 Okla. Cr. 445, 77 Pac. (2d) 757 (1938), quoting with approval from *Ex parte Wilson, supra.*

In *Morse* v. *State* it is pointed out furthermore that these two sections of the statute, known as the quart and gallon laws, have been wholly superseded by 37 O. S. A. 82, which is now the only possession statute in force in Oklahoma, and it, as pointed out heretofore, does not make mere possession a crime but is only an evidence statute.

Coming now to the analogy of the holding of the aforesaid statutes restricting possession of liquor for personal

use unconstitutional, we wish to direct sharp attention to this language in the opinion of *Morse* v. *State, supra* (1. c. 458):

> "In the case of *Ex parte Wilson*, 6 Okla. Cr. 451, 119 Pac. 596, this court, in an elaborte opinion held section 4 of the above act unconstitutional, for the reason that the Legislature did not have the power to absolutely prohibit the keeping of intoxicating liquors for one's own individual use. The constitutionality of section 5 was not passed upon by the court in this case, but the two sections of the statute being analogous it is clear that the court would have held section 5 unconstitutional for the same reason that section 4 was held unstitutional".

Under this holding we believe it cannot be gainsaid that the Circuit Court was well justified in saying with reference to 37 O. S. A. 38, the statute prohibiting receipt of liquor from a carrier for personal use, "it would seem that this section is unconstitutional". See also *Brickey* v. *State*, 55 Okla. Cr. 451, 32 Pac. (2d) 743.

We respectfully submit that, there being no sale in Oklahoma, the liquor being acquired for the personal use of the officers in the Reservation, there being no importation "into" the state, and the liquor being in the hands of a carrier at the time of its seizure, there was no violation of the Oklahoma liquor laws and the seizure by the state officers, the petitioners, was wrongful.

If these statutes of the state were in any wise applicable to this shipment, they would only be such as Federal laws under the Assimilative Crimes Act (though we

deny that they were adopted by this act); they are not operative as state laws[22].

The petitioners, state enforcement officers, had no power or authority over the enforcement of such laws, and the respondent common carrier was entitled to have injunctive relief against the wrongful withholding of said liquor and interference with its delivery[23].

The sale of the liquor here involved was consummated in the State of Illinois, as the petitioners have admitted[24], and, the courts below were right in holding that there was no violation of 10 USCA Section 1350, 31 Stats: 758, prohibiting the sale of intoxicating liquors on Military Reservations.

CONCLUSION

In its final analysis, the gravaman of this case is the issue of whether the laws of a state have any more application to or control over liquor shipments originating outside the state destined to a Federal Military Reservation within its boundaries than shipments passing through and beyond its geographical confines.

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22. Franklin v. United States, 216 U. S. 559, 568; United States v. Press Publishing Company, 219 U. S. 1, 8; Puerto Rico v. The Shell Company 302 U. S. 253, 266.

23. Leisy v. Hardin, 135 U. S. 100; Bowman v. Chicago and Northwestern Ry. Co., 125 U. S. 465; McFarland v. American Sugar Refg. Co., 241 U. S. 79, 84-5; Barnett v. State, 243 Ala. 410, 9 So. (2d) 267, 268; McCanless v. Graham, 177 Tenn. 57, 146 S. W. (2d) 137, 138.

24. In order to refute a possible claim of that the Officers Club Mess being a Federal instrumentality was beyond the powers of the state, the petitioners stated in their brief in the Circuit Court: "Moreover, the Officers Club was not concerned with this shipment, which was neither ordered nor purchased by nor to be the property of the Club"

That shipments into such Federal enclaves are not importations into the state is the irresistible conclusion compelled by the foregoing authorities and particularly the Yosemite case.

If this were not true, a state could, indirectly though none the less effectively, in large measure control, regulate and restrict activities within Military and other Federal enclaves through embargo. By such means, Nations have been brought to their knees in surrender.

The judgment of the trial court should be affirmed.

Respectfully submitted,

JOHN B. DUDLEY,
DUKE DUVALL,
Apco Tower,
Attorneys for Respondent.

DUDLEY, DUVALL & DUDLEY,
Of Counsel.

January, 1944.

SUPREME COURT OF THE UNITED STATES.

No. 447.—October Term, 1943.

Walter B. Johnson, T. R. Husted, B. A. West, Charles Riggs, George Goff, Mike McGrew, Lewis Kolb, J. M. Gentry, and Ivan Kennedy, Petitioners,

vs.

Yellow Cab Transit Company, a Corporation.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Tenth Circuit.

[March 13, 1944.]

Mr. Justice Black delivered the opinion of the Court.

Petitioners are officials of Oklahoma State and Oklahoma County concerned with enforcement of Oklahoma's liquor laws. Respondent is a common carrier by motor vehicle authorized by the Interstate Commerce Commission to transport in interstate commerce various commodities, including wines and liquors. See U. S. C. Title 49, c. 8. In regular course of business the respondent carrier undertook to transport 225 cases of wines and liquors from East St. Louis, Illinois, through Missouri, into Oklahoma and thence to a consignee at Fort Sill, a military reservation within the boundaries of Oklahoma. While the vehicle carrying the liquors was momentarily stopped at Oklahoma City for the purpose of loading and unloading other freight, the petitioner officials forcibly seized and took away the liquors.

The carrier filed a complaint in the federal District Court alleging that the seizure constituted an unlawful interference with its authorized interstate transportation, and praying that the Court order the officials to return the liquors so that it might deliver them to the consignee at Fort Sill. The answer to the complaint, in substance, admitted the material facts relative to the shipment and seizure of the liquors but denied the allegation of the complaint that the seizure was unlawful. The answer did not allege that judicial proceedings concerning the seized liquor were pending, or were to be commenced, in an Oklahoma state court. After

a trial on stipulated facts, the District Court ordered the liquors returned to the carrier and forbade the officials to interfere with completion of the shipment. 48 F. Supp. 594. The Circuit Court of Appeals, one Judge dissenting, affirmed. 137 F. 2d 274.

Questions presented in the petition for review concerning important state and federal relationships with regard to federal enclaves prompted us to grant certiorari. 320 U. S. —. Argument has revealed, however, that the determinative issues are more narrow: (1) Did transportation of the liquors through Oklahoma violate that State's law so as to justify their seizure? (2) Should the District Court have denied the carrier equitable relief because of the "unclean hands" doctrine, even though seizure of the liquors by the officials was illegal? This second question rests on the disputed premise that introduction of the liquors into Fort Sill would have violated the laws of the United States.

Petitioners do not claim, nor could they claim, that either of these two separate questions should be decided in their favor on the ground that Oklahoma has power to control liquor transactions on the Fort Sill Reservation. With certain minor exceptions not here material, Oklahoma ceded to the United States in 1913 whatever authority it ever could have exercised in the Reservation.[1] The Oklahoma Supreme Court has recognized that the general power to govern the Fort Sill area is vested in the United States, not in Oklahoma,[2] and our decisions lead to the same conclusion.[3]

First. Since power to govern Fort Sill is in the United States, and since the seized liquors were not to be sold, delivered or otherwise disposed of in Oklahoma proper, as distinguished from Fort Sill, the only Oklahoma laws called to our attention which could have justified the seizure are those which apply to liquor transportation. No Oklahoma law purports on its face to prohibit or regulate interstate shipments of liquor into and through the state to another state, or to an area subject to the exclusive jurisdiction of the United States. And we were informed at the bar by Oklahoma's legal representative that no state statute had been construed by any state court as applying to such through shipments. Oklahoma

[1] Oklahoma Laws, 1913, c. 52, p. 90.

[2] See Utley *v.* State Industrial Commission, 176 Okla 255; In re Annexation of Reno Quartermaster Depot Military Reservation to Independent School District No. 34, Canadian County, 180 Okla. 274.

[3] See Collins *v.* Yosemite Park Co., 304 U. S. 518, 533; Pacific Coast Dairy, Inc. *v.* Department of Agriculture of California, 318 U. S. 285, 294.

law does make it unlawful "to import, bring, transport, or cause to be brought or transported *into the State* . . . intoxicating liquor . . . without a permit . . . as hereinafter provided." Okla. Stat. (1941) Title 37, § 41. The argument is that the Oklahoma legislature intended this statute to apply to liquor imported into the Fort Sill Reservation because the latter is located within the exterior boundaries of Oklahoma. Were this statute intended to do no more than provide a means whereby the state could protect itself from illegal liquor diversions within the area which Oklahoma has power to govern, the interpretation asked might well be an acceptable one. *Duckworth* v. *State of Arkansas*, 314 U. S. 390; *John Thomas Carter and Eugene Pearson Macemore* v. *The Commonwealth of Virginia*, decided January 31, 1944. But the statute has no such limited purpose. No permit to transport liquor into Oklahoma can be obtained at all except for scientific, mechanical, medicinal, industrial, or sacramental purposes. Okla. Stat. (1941) Title 37, § 42. To construe the state statute in the manner urged would be to say that, although Oklahoma admittedly has no power directly to regulate the liquor traffic on the Reservation, the Oklahoma legislature intended practically to exclude from the Reservation liquor which might be put to legal uses under controlling United States laws. Neither the words nor the scheme of the statute in question, nor any other relevant material pointed out to us, indicate that the Oklahoma legislature had such a purpose. Had the legislature expressed such a purpose, questions would be raised which we need not here consider. See *Collins* v. *Yosemite Park & Curry Co.*, 304 U. S. 518, 533; *Pacific Coast Dairy, Inc.* v. *Department of Agriculture of California*, 318 U. S. 285, 295. Consequently, we find no justification for the seizure in Oklahoma law.

Second. But it is said that despite the fact the seizure was illegal and wholly without justification, the consignee could not have received the liquors without violating the laws of the United States and for that reason the District Court should have denied the carrier any relief under the "clean hands" doctrine.

We may assume that because of the clean hands doctrine a federal court should not, in an ordinary case, lend its judicial power to a plaintiff who seeks to invoke that power for the purpose of consummating a transaction in clear violation of law.[4]

[4] See generally 2 Pomeroy's Equity Jurisprudence (5th Ed.) §§ 402, 403. Cf. Bentley v. Tibbals, 223 F. 247, 252; Bonnie & Company v. Bonnie Bros., 160 Ky. 487, 495.

But this does not mean that courts must always permit a defendant wrong doer to retain the profits of his wrong doing merely because the plaintiff himself is possibly guilty of transgressing the law in the transactions involved.[5] The maxim that he who comes into equity must come with clean hands is not applied by way of punishment for an unclean litigant but "upon considerations that make for the advancement of right and justice." *Keystone Driller Co.* v. *General Excavator Co.*, 290 U. S. 240, 245. It is not a rigid formula which "trammels the free and just exercise of discretion." *Ibid.*, 245, 246. Therefore, before deciding the applicability of the maxim to the case at hand, we must examine the particular transactions and circumstances involved together with the federal laws which are alleged to taint these transactions with illegality.

As shown by the stipulated facts in this record, the circumstances of the liquor shipment were as follows: Fort Sill had an Officers' Club, which provided among other things an officers' mess, living quarters for some Officers, and other customary club facilities. Several hundred Officer-members gave to the Club Secretary, himself an Officer, separate written orders for liquor together with money or checks in payment for the respective orders. Acting for the Officer-members, the Secretary telephoned from Fort Sill to a dealer at East St. Louis, Illinois, and ordered the liquors shipped to the Club. The dealer delivered the liquors to the respondent-carrier under a uniform through bill of lading. It was this shipment which the state officials seized. Had the shipment not been seized it would have arrived at the Club for delivery to the several Officers who had paid for it.

It is first contended that purchase and delivery of the liquors was in violation of U. S. C., Title 10, § 1350, set out in the margin.[6] The agreed facts, summarized above sufficiently show that the transactions were not in violation of this statute.

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[5] See, e. g., Catts v. Phalen, 2 How. 376; Kinsman v. Parkhurst, 18 How. 289, 293; Stark v. Crant, 16 N. Y. S. 526; Martin v. Hodge, 47 Ark. 378.

[6] "The sale of or dealing in, beer, wine or any intoxicating liquors by any person in any post exchange or canteen or army transport or upon any premises used for military purposes by the United States, is hereby prohibited. The Secretary of War is hereby directed to carry the provisions of this section into full force and effect." 31 Stat. 758; U. S. C. Title 10, § 1350. See Note 9, *infra*.

Petitioners next argue that the liquor transactions here involved were in violation of the assimilative crimes statute.[7] This statute, it is said, adopts all of the various penal statutes of Oklahoma relating to liquor and makes them the federal law applicable to the Fort Sill Reservation. Cf. *United States* v. *Press Publishing Company*, 219 U. S. 1; *Franklin* v. *United States*, 216 U. S. 559. Petitioners' argument as to the applicability of the assimilative crimes statute raises at least three distinct questions, no one of which is easily resolved: (1) Which, if any, of the Oklahoma penal statutes are so designed that they could be adopted by the assimilative crimes statute and applied to Fort Sill?[8] See opinions of Circuit Court of Appeals, *supra*; cf. *Murray* v. *Joe Gerrick and Co.*, 291 U. S. 315. (2) If there are Oklahoma statutes which could be so adopted, are all or any of them in conflict with federal policies as expressed by Acts of Congress other than the assimilative crimes statute or by valid Army Regulations[9] which have

[7] "Whoever, within the territorial limits of any State, . . . but within or upon any of the places now existing or hereafter reserved or acquired, described in section 272 of the Criminal Code . . . , shall do or omit the doing of any act or thing which is not made penal by any laws of Congress, but which, if committed or omitted within the jurisdiction of the State, Territory or district in which such place is situated, by the laws thereof in force on February 1, 1940, and remaining in force at the time of the doing or omitting the doing of such act or thing, would be penal, shall be deemed guilty of a like offense and be subject to a like punishment." 54 Stat. 234, U. S. C. Title 18, § 468. Section 272 of the Criminal Code, referred to in this Act, is broad enough to include the Fort Sill Reservation. 35 Stat. 1143.

[8] The Oklahoma liquor statutes pertaining to liquor imports provide one illustration of the difficulties inherent in this question. These penal statutes are designed to enforce a system of licensing such imports by special permits issued by a state agency. Okla. Stat. (1941) Title 37, §§ 41-48. Importation of liquors without a special permit is made penal. *Ibid.*, §§ 41, 46. To hold, therefore, that the assimilative crimes statute adopts Oklahoma's penal liquor laws the Court might further have to hold that that statute compels federal officials on the Fort Sill Reservation to apply for and obtain state permits before they can lawfully import any liquors for any purpose. And a strong argument might be made that had Congress intended such a drastic result, it would have considered the problem and used more express language. See Note 7, *supra*; Senate Report No. 1699, Senate Judiciary Committee, 76th Cong., 3d Sess.; House Report No. 1584, House Judiciary Committee, 76th Cong., 3d Sess. Cf. Collins v. Yosemite Park Co., 304 U. S. 518, 533.

[9] Army regulations have declared certain liquor policies for Army reservations generally. See, e. g., A. G. 250.1 (1-20-43), concerning the sale of liquor upon premises used for military purposes by the United States, published by the War Department on January 25, 1943, in Circular No. 29; and A. R. 210-65, concerning Army Exchanges, published by the War Department on March 19, 1943. Petitioners have not contended that the liquor transactions here were contrary to any Army Regulations, and no Regulations have come to our attention which would intiicate that there is a basis for such a contention.

the force of law?[10] Cf. *Stewart & Co.* v. *Sadrakula*, 309 U. S. 94, 99-104. (3) Assuming that certain Oklahoma statutes are adaptable, and are not inconsistent with federal policies, would such statutes make penal the liquor transactions here stipulated to have taken place? Inextricably involved in each of the three questions is the further problem of whether certain of the Oklahoma liquor statutes may be inconsistent with Oklahoma's constitution as interpreted by the Oklahoma Supreme Court. See opinions of the Circuit Court of Appeals, *supra*; *Ex parte Wilson*, 6 Okla. Cr. 451; *Morse* v. *State*, 63 Okla. Cr. 445.

Considering the difficulty and importance of a correct decision of the novel issues which an attempt to construe this federal criminal statute would present, together with the other circumstances of the present case, we are convinced that in the interest of sound administration of justice we should refrain from a complete exploration of these issues in this proceeding, especially since these issues are only collateral to the principal issue of the legality of the seizure of the liquor. Were we to decide that the assimilative crimes statute is not applicable to this shipment of liquors, we would, in effect, be construing a federal criminal statute against the United States in a proceeding in which the United States has never been represented. And, on the other hand, should we decide the statute outlaws the shipment, such a decision would be equivalent to a holding that more than 200 Army Officers, sworn to support the Constitution, had participated in a conspiracy to violate federal law. Not only that, it would for practical purposes be accepted as an authoritative determination that all army reservations in the State of Oklahoma must conduct their activities in accordance with numerous Oklahoma liquor regulations, some of which, at least, are of doubtful adaptability. And all of this would be decided in a case wherein neither the Army Officers nor the War Department nor the Attorney General of the United States have been represented, and upon a record consisting of stipulations between a private carrier and the legal representatives of Oklahoma.

Whether the declaration of policies contained in these various regulations indicates an intention of the War Department to permit all liquor transactions not expressly prohibited, and whether, if it does, the War Department has the power under Acts of Congress to permit such transactions, seem open questions.

[10] Standard Oil Co. of California v. Johnson, 316 U. S. 481, 484.

Nor is it any answer to say that the carrier should be compelled to sue in the Oklahoma state courts to reclaim the liquors in order to give the Oklahoma courts the opportunity collaterally to pass upon the question of whether these liquor transactions violate the federal assimilative crimes statute. That broad question, though some parts of it involve a consideration of the proper scope of the state law adopted by the federal government, is in the final analysis a question of the correct interpretation of a federal criminal statute, and therefore an issue upon which federal courts are not bound by the rulings of state courts. *Puerto Rico* v. *The Shell Co. (P. R.), Limited*, 302 U. S. 253, 266. Indeed Congress has vested in the federal courts exclusive jurisdiction over the trial of all federal crimes. Judicial Code § 256 as amended. And so, even if the carrier could bring suit in an Oklahoma state court to reclaim the liquor, a point which is itself subject to some doubt,[11] the federal District Court should not for that reason refuse relief in the present suit.

The ultimate question in this part of the case is whether the carrier, whose complete good faith is in no way questioned, should have the court's doors shut to it. So to hold would be to say that the state officials, who so far as this record shows, had no search warrant or judicial process of any kind,[12] could retain liquors which they seized without authority of law. We do not find here any "unconscientious or inequitable attitude" on the part of the carrier. *International News Service* v. *The Associated Press*, 248 U. S. 215, 245. And so far as this record shows, the carrier, in seeking relief in the courts against the unlawful seizure, has proceeded in the only "practicable and adequate way"[13] available.

[11] Nothing in the record or briefs justifies the conclusion that the carrier could bring such a proceeding in the state courts. And see Okla. Stat. (1941) Title 37, §§ 72, 86, and 89; Blunk v. Waugh, 32 Okla. 616; Lee v. State, 180 Okla. 643; cf. 1942 Chevrolet Automobile Motor No. B A-193397 v. State, 191 Okla. 26, 27. Nor has there been any attempt to show that, if the carrier could bring such a proceeding, the Army Officers, the War Department, and the Attorney General of the United States could intervene on the collateral issue of "clean hands."

[12] Under Oklahoma law there are no "property rights" in liquor. Okla. Stat. (1941) Title 37, § 72. Officers with power to execute criminal process may arrest without a warrant one who violates the state liquor laws, and seize the property used in the violation, and it is their duty to take the property before a Court which may order it forfeited and destroyed. *Ibid.*, §§ 89, 90. As stated in the body of the opinion, the record does not show that proceedings of any kind were ever instituted, or sought to be instituted, in the state courts.

[13] McFarland v. American Sugar Refining Company, 241 U. S. 79, 84-85; see also Bowman v. Chicago, etc. Railway Company, 125 U. S. 465.

If the carrier's delivery of these liquors on the Fort Sill Reservation would violate any federal law, federal agencies exist which are charged with responsibilities to institute appropriate proceedings against the carrier in federal tribunals. In such proceedings the parties would be the United States and the carrier, and the issue of violation of federal laws would be directly, and not collaterally, presented. The complicated federal questions involved, concerning various federal statutes as well as Army rules and regulations, could be answered upon an adequate presentation of all factors essential to a right and just determination.

And, similarly, if the several hundred Army Officers who ordered and paid for these liquors have acted contrary to United States Statutes, Army Regulations, or Orders of the Post Commandant, it is not to be doubted that the Army or some other United States agency is capable of determining what course shall be pursued. Should the United States determine to proceed in the matter it could do so at such time and place as least would hamper essential military training, and the Army Officers would be heard before they would be stigmatized as law breakers and subjected as such to Army discipline. We will not, at this time, and upon this inadequate record, resolve all doubts against the lawfulness of their conduct in order to deny relief against a plainly unlawful seizure of their property from an interstate carrier whose good faith has not been questioned.

Affirmed.

Mr. Justice FRANKFURTER, dissenting.

Mr. Justice ROBERTS and I are unable to agree with the Court's decision.

The ultimate issue in this case is whether a federal court should, by issuing an injunction, aid in the consummation of what appears to be a violation of the Criminal Code of the United States. For it must not be forgotten that a mandatory injunction, the relief sought in this suit, "is an extraordinary remedial process which is granted, not as a matter of right but in the exercise of a sound judicial discretion." *Morrison* v. *Word*, 266 U. S. 481, 490.

A large shipment of wine and spirituous liquors was seized by law-enforcement officers of the State of Oklahoma while the liquor had temporarily come to rest at the terminal of the Transit Com-

pany. The liquor, in course of transit from East St. Louis, Illinois, to the Fort Sill Military Reservation, was destined for the Officers Club at the Reservation for delivery to several hundred members of the Club on whose behalf its secretary was managing the importation of the liquor. Upon seizure the liquor was deposited in the County Court House of Oklahoma County, where it is held as an illegal shipment of intoxicating liquor subject to forfeiture and destruction. Thereupon the Transit Company brought this suit for a mandatory injunction against the state officers, requiring them to return the shipment and to refrain from interfering with its delivery by the Transit Company at the Reservation. The injunction issued and the Circuit Court of Appeals, in two separate opinions, approved, with one judge dissenting. 48 F. Supp. 594; 137 F. 2d 274.

The facts establish that that which was done, if it had been done in Oklahoma proper, would under its laws have constituted a misdemeanor. Delivery of the liquor on the Reservation would therefore be an offense under the federal criminal law by virtue of the Act of June 6th, 1940, 54 Stat. 234, whereby Congress made applicable to the Reservation the penal laws of Oklahoma in existence on February 1, 1940, 18 U. S. C. § 468. But even if there were doubt that the importation of the liquor into the Reservation under the circumstances of this record would offend the Criminal Code of the United States, on the ground that the act if committed within the jurisdiction of Oklahoma "by the laws thereof in force on February 1, 1940 . . . would be penal", equity should resolve the doubt in favor of law by denying the extraordinary remedy of injunction instead of resolving it against law by granting the injunction.

Oklahoma is, colloquially speaking, a dry State. Only for strictly defined purposes may liquor from without the State be lawfully brought into it for consumption. Prohibited importations are penalized. If a transaction like the one before us related wholly to Oklahoma soil it would—there can hardly be doubt—be outlawed. The Circuit Judge who speaks with special knowledge of Oklahoma law assures us that "the State of Oklahoma, by its Constitution and laws, makes it unlawful to possess, transport, furnish, or receive this particular shipment of intoxicating liquor, and it is therefore contraband and subject to seizure and confiscation under the laws of the State," 137 F. 2d at 279. Judge Murrah calls

specific attention to an Oklahoma statute which makes it a misdemeanor "for any person in this State to receive directly or indirectly any liquors, the sale of which are prohibited by the laws of this State, from a common or other carrier."[1] The opinion of Judge Phillips recognizes that this Act of 1917 penalizes the transaction before us within Oklahoma, but rejects its bearing when a federal court is asked to grant an injunction involving this law by suggesting that this statute is "unconstitutional". He bases this suggestion on the argument that inasmuch as the Oklahoma Supreme Court has held that a statute making mere possession of over one quart of spirituous liquors unlawful is not "a reasonable exercise of the police powers", and therefore beyond the power of the legislature to make unlawful, *Ex parte Wilson*, 6 Okla. Cr. 451, 475, "it must likewise be beyond its power to make unlawful the possession of intoxicating liquor for personal use received from a common carrier." 137 F. 2d at 277.[2] In other words, it is argued that because the Oklahoma Supreme Court held that the mere possession of liquor cannot be made a crime by Oklahoma, Oklahoma cannot prohibit the receipt of liquor from a carrier. On such reasoning a law that has been on the Oklahoma statute books for more than twenty-five years, and during that period actively enforced and never questioned, is thrown into discard when a federal court is asked to exercise its duty of discretion in granting the

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[1] "Section 1. It shall be unlawful for any person in this State to receive directly or indirectly any liquors, the sale of which are prohibited by the laws of this State, from a common or other carrier.

"It shall also be unlawful for any person in this State to possess any liquor, the sale of which are prohibited by the laws of this State, received directly or indirectly from a common or other carrier in this State. This section shall apply to such liquors intended for personal use, as well as otherwise, and to interstate as well as intrastate shipments or carriage. Any person violating any provision of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not less than $50.00 nor more than $500.00 and by imprisonment for not less than thirty days nor more than six months; Provided, however, that scientific institutions, universities and colleges, and bonded apothecaries, druggists, hospitals or pharmacists may receive and possess pure grain alcohol, as provided by the laws of this State, to be used only for such purposes as are prescribed by the laws of this State." Laws 1917, ch. 186, p. 350, § 1.

[2] Ex parte Wilson was decided in 1911. In 1913, the Oklahoma legislature enacted a statute which made the possession of more than one quart of liquor "*prima facie* evidence of an intention to convey, sell or otherwise dispose of such liquors". Laws 1913, c. 26, p. 48, § 6, 37 O. S. A. § 82. The validity of this statute was upheld (Caffee v. State, 11 Okla. Cr. 485), and the Oklahoma court ruled that it superseded the 1911 Act which had been held invalid. Cf. Jenkins v. State, 28 Okla. Cr. 249; Morse v. State, 63 Okla. Cr. 445, 458.

extraordinary relief of an injunction. I am unable to follow such reasoning because Oklahoma law makes it baseless. The validity of this provision, as already indicated, has been taken for granted by the Oklahoma courts. It was the subject of litigation in *De Hasque* v. *Atchison, T. & S. F. Ry. Co.*, 68 Okla. 183, and *Crossland* v. *State*, 74 Okla. 58, and a conviction under this Section was sustained in *Walker* v. *State*, 18 Okla. Cr. 661. This is a specific statute, the continuing validity of which is wholly unaffected by speculative doubts regarding other and irrelevant liquor legislation of Oklahoma. The dissenting judge was justified in reading the Act of 1917 as conclusively condemning the transaction which the carrier was seeking to consummate as an offense, were it subject to Oklahoma law.[3]

But the shipment of liquor in controversy was for delivery on the Fort Sill Reservation, that is, a place within the physical boundaries of Oklahoma but beyond its jurisdiction. It was stipulated between the parties that the purpose of the suit was to enable the Transit Company to transport and deliver the shipment to its destination in the Reservation. Such was the basis of the District Court's decree requiring the return of the shipment and enjoining interference with "delivery of said shipment to its destination" and no place else. This brings us to the second half of the question in this case: may the Transit Company, according to the law that rules such matters on the Reservation, lawfully deliver this liquor at Fort Sill? Of course all transactions on the Reservation are subject to regulation by Congress. Constitution, Art. IV, § 3, par. 2; see *Collins* v. *Yosemite Park Co.*, 304 U. S. 518; *Penn Dairies* v. *Milk Control Comm'n*, 318 U. S. 261; *Pacific Coast Dairy* v. *Dep't*, 318 U. S. 285. If it chooses, Congress may provide a rule of law which runs counter to the expressed dry policy of Oklahoma, and it may

[3] At least one other provision of Oklahoma legislation may well be found to outlaw the delivery of the shipment for the completion of which the carrier is seeking the aid of the federal court. Chapter 16, p. 16, § 1 of the Laws of 1939 makes it "unlawful for any person . . . to import, bring, transport, or cause to be brought or transported into the State of Oklahoma, any intoxicating liquor . . . without a permit first secured therefor as hereinafter provided." 37 O. S. A. § 41. Permits may be issued, under § 2 of that Act, only for the importation of alcohol for scientific, mechanical, medicinal or sacramental purposes. 37 O. S. A. § 42. Since the importation of the liquor here involved cannot possibly be said to fall within the classifications for which permits are granted, these statutory provisions as applied to the circumstances in this case are penal, and as such, may be applicable to the Reservation under the Assimilative Crimes Act. 54 Stat. 234, 18 U. S. C. § 468. See *infra*.

do so either specifically for Fort Sill or generally for all federal reservations. Congress has not done so. It has done the opposite. For nearly one hundred and fifty years most of the rules of life on national reservations have been controlled by the laws of the States in which these reservations are located. By the Act of March 3, 1825 (4 Stat. 115), Congress provided that when something is done on a federal reservation which is not made penal by the laws of Congress but which under State law, if the State had jurisdiction, would be punishable, the act should be equally punished as wrongful if committed on the reservation. In thus adopting the penal laws of the States as its code for lawful conduct on federal reservations within the States, Congress did not give to the States a free hand to impose the continuing process of State law-making on places over which the United States has jurisdiction. Only the laws of the States existing at the time when the Act of March 3, 1825 was enacted became operative on the reservations. *United States* v. *Paul*, 6 Pet. 141. And so, in view of the inevitable modifications and additions in the penal laws of the States, Congress has accommodated its adoption of those state laws, as the governing federal law, by bringing up to date from time to time its adoption for enforcement on federal reservations of the policies of the States which have penal sanctions. Accordingly, the Act of March 3, 1825, was in substance reenacted on April 5, 1866, 14 Stat. 12, 13, was carried forward in § 5391 of the Revised Statutes of 1878, was again reenacted on July 7, 1898, 30 Stat. 717; and became § 289 of the Federal Penal Code of 1910, 35 Stat. 1088, 1145. Since then and in relatively quick succession, Congress has three times brought still nearer the effective date of state penal laws applicable on federal reservations, to wit by the amendments of June 15, 1933, 48 Stat. 152; June 20, 1935, 49 Stat. 394; and June 6, 1940, 54 Stat. 234. The last Amendment now controls whereby

> "Whoever . . . shall do . . . any act or thing which is not made penal by any laws of Congress, but which if committed or omitted within the jurisdiction of the State, Territory, or district in which such place it situated, by the laws thereof in force on February 1, 1940, and remaining in force at the time of the doing . . . of such act or thing, would be penal, shall be deemed guilty of a like offense and be subject to a like punishment." 18 U. S. C. § 468.

The very important purpose of this legislation in the working of our dual system, as expounded after the fullest consideration heretofore given to this subject by this Court, bears repetition:

> "while the statute leaves no doubt where acts are done on reservations which are expressly prohibited and punished as crimes by a law of the United States, that law is dominant and controlling, yet, on the other hand, where no law of the United States has expressly provided for the punishment of offenses committed on reservations, all acts done on such reservations which are made criminal by the laws of the several States are left to be punished under the applicable state statutes. When these results of the statute are borne in mind it becomes manifest that Congress, in adopting it, sedulously considered the two-fold character of our constitutional government, and had in view the enlightened purpose, so far as the punishment of crime was concerned, to interfere as little as might be with the authority of the States on that subject over all territory situated within their exterior boundaries, and which hence would be subject to exclusive state jurisdiction but for the existence of a United States reservation. In accomplishing these purposes it is apparent that the statute, instead of fixing by its own terms the punishment for crimes committed on such reservations which were not previously provided for by a law of the United States, adopted and wrote in the state law, with the single difference that the offense, although punished as an offense against the United States, was nevertheless punishable only in the way and to the extent that it would have been punishable if the territory embraced by the reservation remained subject to the jurisdiction of the State." *United States v. Press Publishing Co.*, 219 U. S. 1, 9-10.[4]

Therefore the crucial question in relation to our present problem is whether any law of Congress has overridden the Oklahoma Act of 1917 which makes unlawful the transaction that the Transit Company seeks to consummate with the aid of an injunction issued by a federal court.

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[4] And see Webster, the sponsor of the bill in the Senate, in Register of Debates in Congress (Gales & Seaton, 1825) Vol. I, p. 338: "As to the third section [the precursor of the present Assimilative Crimes Act], it must be obvious, that, where the jurisdiction of a small place, containing only a few hundreds of people, (a navy yard for instance,) was ceded to the United States, some provision was required for the punishment of offences; and as, from the use to which the place was to be put, some crimes were likely to be more frequently committed than others, the committee had thought it sufficient to provide for these, and then to leave the residue to be punished by the laws of the state in which the yard, &c. might be. He was persuaded that the people would not view it as any hardship, that the great class of minor offences should continue to be punished in the same manner as they had been before the cession."

There is no such law. Long before the Twenty-first Amendment, Congress did provide that "The sale of or dealing in, beer, wine or any intoxicating liquors by any person in any post exchange or canteen or army transport or upon any premises used for military purposes by the United States, is hereby prohibited." Act of February 2, 1901, § 38, 31 Stat. 748, 758, 10 U. S. C. § 1350. Plainly, the purpose of this legislation is not to supplant social policies in regard to alcoholic liquor in the various States within which the many federal enclaves are located except to the extent of providing minimum regulations to restrict the free dealing in liquor at all Army posts including those within wet States. The specific barrier thus erected by Congress against the liberal liquor policies of some States should not now be used as a qualification of the generality of the Assimilative Crimes Statute in order to serve as a barrier against the prohibitory laws of other States. No such policy can be drawn from the Act of 1901—quite the opposite is implied. And assuming that the military could assert such a policy in the interest of Army morale, there is wholly lacking any manifestation that the Army deems it necessary for the morale of its officers that at Fort Sill conduct should be permitted which if committed in the surrounding territory of Oklahoma would offend its penal laws. So far as the War Department has indicated a policy, its policy like that of the Assimilative Crimes Statute is to adopt on military reservations the laws of their respective States. Thus, in reference to A. G. 250.1, § VI, par. 4 (1-20-43) of Circular No. 29 of the War Department, Jan. 25, 1943, provides: "Beer of an alcoholic content not in excess of 3.2 per centum by weight may be sold or dealt in upon any of the mentioned premises unless a State enactment of the State in which the premises are located prohibits the sale of or dealing in such beer throughout the entire State." And the Judge Advocate General has said that, "War Department policy does not favor sale of such [3.2] beer by exchanges in States where its sale is absolutely prohibited . . . ." Bulletin of the Judge Advocate General of the Army, July 1942, p. 100, § 310.

Even if there were more hypothetical doubt than the laws and decisions of Oklahoma make manifest as to the validity and vitality of the Act of 1917 and its applicability to the importation of the liquor shipment involved in this case, if the importation were into Oklahoma proper, such a contingency should be left for determina-

tion by appropriate proceedings in the state court to recover the liquor and not be made the basis for an injunction against the state law in the federal court. Since federal law here too turns on state law by adoption through the Assimilative Crimes Statute, the basis of our decision in *Penn Dairies v. Milk Control Comm'n, supra*, becomes relevant. Here, as in that case, there is an "absence of some evidence of an inflexible Congressional policy", 318 U. S. at 275, opposed to the policy expressed by the State. In this case as in that, we should therefore be slow to strike down state legislation by elaborate implications. The discretionary powers of equity particularly counsel against it. And even if there were more doubt than appears regarding the adoption of the Act of 1917 by the Assimilative Crimes Statute, whereby the delivery of the liquor by the Transit Company on the Reservation would constitute a misdemeanor, that doubt too should not be resolved against the law in such a proceeding as this for an injunction. That question although federal may also be litigated as part of the indicated state court suit, where the Attorney General may intervene and then come here if he chooses to assert whatever position the Government deems it appropriate to press.

In my view therefore it was an inequitable exercise of discretion to issue this injunction. Of course, "Equity does not demand that its suitors shall have led blameless lives." *Loughran v. Loughran*, 292 U. S. 216, 229. But where the relief sought is not as to something past and collateral, but where it is the very means, as is the case here, for completing an outlawed transaction, a court of equity should withhold its aid and not become the promoter of wrongdoing. The possible illegality of the seizure of the liquor by the Oklahoma enforcement officers is quite irrelevant to our problem. "A question of public policy is presented—not a mere adjudication of adversary rights between the two parties." *Weil v. Neary*, 278 U. S. 160, 171. The abstention which equity exercises, as it should here, under the short-hand phrase of the "clean hands doctrine" is not due to any desire to punish a litigant for his uncleanliness. "But the objection that the plaintiff comes with unclean hands will be taken by the court itself. It will be taken despite the wish to the contrary of all the parties to the litigation. The court protects itself." Mr. Justice Brandeis in *Olmstead v. United States*, 277 U. S. 438, 485. It is hardly seemly for a federal court to order the return of liquor seized with full knowledge by the court that the

carrier would use the liquor to share in the commission of a misdemeanor. The penal statute here applicable is a police regulation violation of which ought not to be furthered by a federal court. While its violation does not imply moral turpitude, Congress has required that army officers should also conform to the law of a State on which military reservations are located in matters that are outside military concern.